

President's Secretariat (Public)
 Aiwan-e-Sadr
 ISLAMABAD

Federal Board of Revenue
Versus
M/s .Haji Hayat Khan & Co, Haripur

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 27.05.2019 PASSED BY THE FTO IN COMPLAINT NO. 186/ISB/IT/2019

Kindly refer to your representation dated 25.06.19 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 25.06.2019 has been filed by the FBR against the findings of the learned FTO dated 27.05.2019, whereby it has been held that:

"The FBR to:

- (i) *direct the Commissioner-IR concerned to complete the verification process expeditiously and dispose of refund application for Tax Year 2017, after providing the Complainant opportunity of hearing, as per law; and*
- (ii) *Report compliance within 45 days."*

2. The background of the matter is that the complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against non-issuance of refund for Tax Year 2017.

3. The Complainant an individual derives income from executing contracts of Pak PWD filed return of income for Tax Year 2017, under Section 114(1) of the Federal Income Tax Ordinance, 2001 (the Ordinance) claiming refund amounting to Rs. 0.883 million. The refund was claimed on account of tax deducted by Pak PWD sent through Bank cheques to the RTO Islamabad. The Complainant e-filed refund application for Tax Year on 26.11.2017 alongwith copies of prescribed certificates under Section 164 of the Ordinance. However, despite repeated efforts of the Complainant, the Department failed to dispose of refund application for Tax Year 2017 within the stipulated time. Hence his complaint before the learned FTO.

4. The complaint was forwarded to the Secretary, Revenue Division and Chief Commissioner, RTO Abbottabad. In response thereto, the Chief Commissioner-IR RTO Abbottabad, filed parawise comments dated 20.02.2019. It was contended that the complainant filed return for Tax Year 2017, claiming refund amounting to Rs. 0.883 million followed by refund application dated 26-11-2017. The Refund Officer (RO) after processing refund submitted refund order for the administrative approval of the Zonal Commissioner-IR (CIR). The matter was, however, referred back to the RO for verification of tax deducted and deposited into the government treasury. The CIR Withholding Zone RTO Islamabad in his comments submitted vide letter dated 14.05.2019, that cheques of tax deduction sent by the Pak PWD, could not be cleared as the same were received on the last date of payment i.e. 30.06.2017. The Finance Deptt. of Pak PWD, had been approached for re-issuance of cheques. The matter is still pending at the Pak PWD's end. Thus the learned FTO passed the above order.

5. The instant representation has been made by the Agency-FBR. Ms. Asma Hoori Additional Commissioner has represented the FBR. On the other hand, Complainant - M/s Haji Hayat Khan & Co., Haripur has not attended the hearing despite notice.

6. A thorough perusal of record and examination of relevant material on record has been undertaken. It is evident that the learned FTO has made the recommendations which are merely to the extent, directing the Commissioner-IR, concerned to complete the verification process expeditiously and dispose of refund application for tax year 2017, after providing the complainant opportunity of hearing as per law. The order is aimed at to satisfy the mandate of law and principles of natural justice. It is the Agency to decide the matter as per law. The Agency has the authority to decide it on merits in accordance with the provisions of law. In the

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circumstances, the findings of the learned FTO are in accord with law and the Agency has unjustifiably filed this representation. Thus the representation is liable to be rejected.

7. Accordingly, Hon'ble President has been pleased to (a) reject the instant Representation of FBR-Agency and to (b) uphold the impugned findings/recommendations of the learned FTO.

(Dr. Zulfiqar H. Awan)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.53/FTO/2019 dated 16.10.2019

Copy for information to:

1. M/s Haji Hayat Khan & Co., Bait Gali Amb State P.P Gali Avazia, Haripur.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
- ✓ 3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. The Commissioner, Inland Revenue, Regional Tax Office, Islamabad.
5. Master file.

(Dr. Zulfiqar H. Awan)
Director General (Legal)